

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 239 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DINESHKUMAR MEGHJI PANJWANI

Versus

LADHRAM DEVKARAN THACKER

Appearance:

MR AR THACKER for Petitioners

RULE SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 29/04/98

ORAL JUDGEMENT

Inspite of service of notice, none appears for the respondents. Heard the learned Advocate for the petitioner.

2. By the impugned order dated 31.12.1997, the Civil Judge (JD), Nakhatrana, District Kutch, has allowed application Exh.86 and ordered that issue 2A shall be

decided as preliminary issue and for which the evidence shall be recorded.

3. The contention of the learned Advocate for the petitioner is that for deciding the preliminary issue, if evidence is to be recorded, then it is a mixed question of law and fact. A question which is a mixed question of law and fact cannot be decided as preliminary issue. Thus,, there is contradiction in the impugned order itself. In my view, there is force in the contention raised by the learned Advocate for the petitioner.

4. The original plaintiff Karsan Dhanji Patel has filed a Special Civil Suit No.99/88 for declaration and possession. It is prayed therein that the sale certificate dated 4.9.1996 is not binding to the plaintiff. The respondent filed written statement controverting the allegations made in the plaint. One of the plea raised in the written statement is that the suit is barred by limitation. On material controversy, the trial court has framed issue. One of the issues is as to whether the suit filed is within the limitation or not. While according to the plaintiff, the limitation is of three years as provided under Article 65 of the Limitation Act. On the other hand, the say of the defendant-respondent is that the case is governed by Article 99 which provides limitation of one year only. The sales certificate is said to be of 4.9.1996. The say of the petitioner is that he was not a party to the sale certificate. In absence of the defendant it is not possible for me to say as to whether this is a mixed question of law and facts. However, the difficulty is that the learned Judge, in the operative portion of the order, has said that for deciding the preliminary issue, it is necessary to record the evidence. This has created confusion. In view of this, it is necessary that the trial court hears the matter afresh and consider whether the issue of limitation in the present case is an issue involving mixed question of law and fact or purely a question of law. If it is a case of mixed question of law and fact, Issue No.2 cannot be decided as preliminary issue.

5. In view of the aforesaid, this Revision Application is allowed. The impugned order dated 31.12.1997 passed by the Civil Judge (JD), Nakhatrana is quashed and set aside. The learned Judge shall pass a fresh order below Exh.86.

Rule made absolute to the aforesaid extent.

.....
msp.